

Notice of Allowability	Application No.	Applicant(s)
	10/055,520	OGAWA ET AL.
	Examiner Raymond J. Bayerl	Art Unit 2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to papers filed 22 December 2004.
2. The allowed claim(s) is/are 1 - 19.
3. The drawings filed on 23 January 2002 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____.

RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173

24 March 2005

1. The following is an examiner's statement of reasons for allowance:

The Examiner has carefully considered independent claim 1, and agrees with the applicant; that the prior art of record does not teach or suggest musical selections being made on the joint basis of "an inherent condition of the target" and "a variable condition varying in accordance with time in an external environment".

Additionally-relevant references came to the Examiner's attention when performing a final search. As is seen in Gunnerson (US #6,657,116 B1) and Cluts (US #5,616,876), it was known in the art to use user preference to select songs for playback, only this kind of system does not use both "inherent" and "variable" conditions of "target". At best, an "inherent" characteristic of the "target" is seen, in the kind of selection the user prefers.

Looney et al. (US #5,969,283) provides an ENTERTAINMENT CENTER in which an administrator can pick from categories such as title, artists, date, speed, dance characteristics, subjective energy level and music style, but these, again are not accompanied with the joint consideration of an "external environment" "variable condition".

Finally noteworthy is Krikorian (US #5,726,909), in which CONTINUOUS PLAY BACKGROUND MUSIC can depend upon the time of day. However, even with a "variable condition" such as this entering as a criterion, the full claimed invention that also uses "an inherent condition of the target" is not fairly taught nor suggested.

2. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - Th from 9:00 AM to 4:00 PM ET.

4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (571) 272-4048. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (703) 872-9306.

5. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.



RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173
24 March 2005